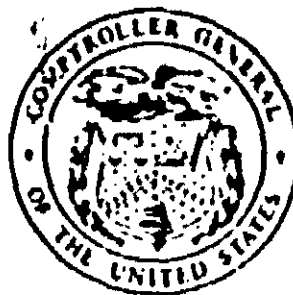


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-204022

DATE: December 31, 1981

MATTER OF: Teledyne Republic

DIGEST:

1. Protester who is second low bidder and therefore would be in line for award if low bid is rejected, as it maintains, is an "interested party" under our Bid Protest Procedures.
2. Low bid need not be rejected because price based on waiver of first article testing was so out of line as to suggest obvious mistake, since agency has determined that first article testing will not be waived for low bidder, and firm's bid on that basis is responsive and is not alleged to be in error.

Teledyne Republic protests the proposed award of a contract to Garton Engineering, Inc. for 851 solenoid valves under invitation for bids (IFB) No. N00104-81-B-1070 (VXC) issued by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. Teledyne contends that Garton made an error in its bid which should result in rejection of the bid as nonresponsive or in award at the price Garton bid. We deny the protest.

The IFB included a schedule sheet upon which bidders were to enter prices which included first article testing. Garton entered a unit price of \$326 on this page. In addition, the IFB contained a "Waiver of First Article Testing" clause, in which the Government retained an option to waive the first article testing requirement for bidders whose identical or similar products had been tested and approved under identical or similar specifications. Bidders seeking waiver of first article testing

were to identify the prior solicitation or solicitations under which the bidder had received approval of its first article, and were to enter a price if first article testing were waived. Garton claimed eligibility for waiver on the basis of a prior contract and entered, after the words "PRICE IF FIRST ARTICLE TESTING IS WAIVED," a price of \$5.00. Garton advises that its intention was to reduce its unit price by \$5 if first article testing were waived, and it entered that figure, instead of \$321, out of confusion since in some past Government solicitations it had been asked to provide the amount by which its price would be reduced if waiver were granted.

After obtaining written verification from Garton, the Navy determined that Garton's bid reasonably could be interpreted only as reducing its unit price from \$326 to \$321 if first article testing were waived. The pre-award survey report on Garton was favorable. Nevertheless, since there is a Quality Deficiency Report with respect to the previous Garton contract, the Navy proposes not to waive first article testing in order to assure an acceptable product is furnished. The Navy states that it did not process Garton's alleged mistake in strict accordance with the requirements of Defense Acquisition Regulation (DAR) § 2-401 (1976 ed.) but contends that as it will not waive first article testing, the alleged mistake with respect to Garton's price without the waiver is immaterial to the award decision. The Navy further contends that Teledyne is not an interested party because each of Garton's prices was below Teledyne's prices so that Teledyne could not be awarded the contract regardless of whether first article testing was waived for Garton.

Under section 21.1(a) of our Bid Protest Procedures, 4 C.F.R. Part 21 (1981), a party must be "interested" in order to have its protest considered by our Office. Whether a party is sufficiently interested depends on its status in relation to the procurement, the nature of the issues raised, and how these circumstances show the existence of a direct or substantial economic interest on the part of the protester. See Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374. We view Teledyne as an interested party because, as the second low bidder, it is in line for award if Garton's bid is rejected.

We fail to see any basis for requiring rejection of Garton's bid, however. Any question regarding the acceptability of the bid on the basis of waiver of first article testing need not be resolved since the Navy has determined that first article testing will not be waived. In this regard, the decision whether to waive first article testing for a particular bidder is essentially an administrative one which our Office will not disturb unless it is shown to be clearly arbitrary or capricious. Wil-Jo Manufacturing Co., B-188902, August 10, 1977, 77-2 CPD 110; 43 Comp. Gen. 780 (1964). In view of the Quality Deficiency Report with respect to the previous contract, we do not find that the failure to waive first article testing for Garton was arbitrary or capricious and Teledyne has advanced no arguments or reasons as to why it should be so considered.

That being so, we see no basis for concluding that acceptance of Garton's bid on the basis of first article testing would be improper. The bid itself on that basis is clearly responsive and no mistake or irregularity in connection with it has been shown or alleged.

The protest is denied.

Larry R. Van Cleave

For Comptroller General
of the United States